

CHAPTER NO. 316

SENATE BILL NO. 190

By Jackson, Hagood, Burks, Kilby, Ketron, Williams, Norris, Curtis S. Person, Jr., McLeary, Black

Substituted for: House Bill No. 2256

**By McMillan, Coleman, Rinks, Fowlkes, Maddox, Hargrove, Litz, Yokley, Cobb, Sontany, Fitzhugh,
Newton, Montgomery**

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 39, Part 2, relative to the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 39, Part 2, is amended by deleting the part in its entirety and substituting instead the following:

§ 40-39-201. (a) This part shall be known as and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004."

(b) The General Assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest; and

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part to allow members of the public to adequately protect themselves and their children from these persons; and

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety; and

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the General Assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm; and

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems which deal with these offenders; and

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive; and

(7) The offender is subject to specified terms and conditions which are implemented at sentencing, or, at the time of release from incarceration, which require that those who are financially able must pay specified administrative costs to the appropriate registering agency, who shall retain these costs, for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year; and

(8) The General Assembly also declares, however, that in making information about certain offenders available to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such offenders.

§ 40-39-202. As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of probation and parole.

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from such judgment. A "conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and a conviction in any other state of the United States, other jurisdiction, or other country. A conviction for an offense committed in another jurisdiction that would be classified as a "sexual offense" under § 40-39-202(17) or a "violent sexual offense" under § 40-39-202(25) if committed in this state shall be considered a "conviction" for purposes of this part. Conviction does not include a disposition of pretrial diversion under § 40-15-105 or a disposition of judicial diversion under § 40-35-313 or the equivalent dispositions from other jurisdictions.

(3) "Designated law enforcement agency" means any law enforcement agency which has jurisdiction over the primary or secondary residence, place of employment, school, or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the board or court ordered probation officer.

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment which involves counseling, coaching, teaching, supervising, or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(5) "Institution of higher education" means a public or private:

- (A) Community college;
- (B) College;
- (C) University; or
- (D) Independent postsecondary institution.

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118.

(7) "Local law enforcement agency" means:

- (A) Within the territory of a municipality, the municipal police department;
- (B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or
- (C) Within the unincorporated territory of a county, the sheriff's office.

(8) "Minor" means any person under eighteen (18) years of age.

(9) "Offender" means both "sexual offender" and "violent sexual offender" unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender.

(10) "Parent" means any biological, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian.

(11) "Primary residence" means a place where the person abides, lodges, resides, or establishes any other living accommodations in this state for five (5) consecutive days.

(12) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction (TDOC), a private contractor with the Tennessee Department of Correction (TDOC), or the board.

(13) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(10).

(14) "Resident" means any person who abides, lodges, resides, or establishes any other living accommodations in this state.

(15) "Secondary residence" means a place where the person abides, lodges, or resides, or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's primary residence; for a person

whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's primary residence, including any out-of-state address.

(16) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense as defined in § 40-39-202(17); or has another qualifying conviction as defined in § 40-39-202(2) provided, that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(C) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(D) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(E) Is discharged from incarceration without supervision on or after January 1, 1995.

(17) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506;

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) Incest, under § 39-15-302;

(vi) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of such minor;

(vii) Indecent exposure under § 39-13-511, upon a third or subsequent conviction;

(viii) Spousal sexual battery (d)(1) under § 39-13-507(c)(1)(C);

(ix) Attempt, under § 39-12-101, to commit any of the offenses enumerated within this subdivision (A);

(x) Solicitation, under § 39-12-102, to commit any of the offenses enumerated within this subdivision (A);

(xi) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (A);

(xii) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (A);

(xiii) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (A); or

(xiv) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (A).

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed];

(iii) Assault with intent to commit rape or attempt to commit sexual battery under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of such minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated within this subdivision (B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated within this subdivision (B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within this subdivision (B); or

(xiv) Accessory before or after the fact or aider and abettor under Title 39, Chapter 1, Part 3 [repealed], to any of the offenses enumerated within this subdivision (B).

(18) "SOR" means the TBI's centralized record System of Offender Registration, verification, and tracking information.

(19) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning.

(20) "TBI" means the Tennessee Bureau of Investigation.

(21) "TBI registration form" means the Tennessee sexual offender/violent sexual offender registration, verification, and tracking form.

(22) "TDOC" means the Tennessee Department of Correction.

(23) "TIES" means the Tennessee Information Enforcement System.

(24) "Violent sexual offender" means a person who has a conviction as defined in § 40-39-202(2) for a "violent sexual offense" as defined in § 40-39-202(25), provided that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995.

(25) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

- (A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;
- (B) Rape, under § 39-2-604 [repealed] or § 39-13-503;
- (C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;
- (D) Rape of a child, under § 39-13-522;
- (E) Attempt to commit rape, under § 39-2-608 [repealed];
- (F) Aggravated sexual exploitation of a minor, under § 39-17-1004;
- (G) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;
- (H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of such minor;
- (I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of such minor;
- (J) Sexual battery by an authority figure, under § 39-13-527;
- (K) Solicitation of a minor, under § 39-13-528;
- (L) Spousal rape under § 39-13-507(b)(1);
- (M) Aggravated spousal rape under § 39-13-507(c)(1);
- (N) Criminal exposure to HIV under § 39-13-109(1);
- (O) Criminal attempt, under § 39-12-101 to commit any of the offenses enumerated within this subdivision (25);
- (P) Solicitation, under § 39-12-102 to commit any of the offenses enumerated within this subdivision (25);
- (Q) Conspiracy, under § 39-12-103 to commit any of the offenses enumerated within this subdivision (25);
- (R) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (25); or
- (S) Being an accessory after the fact under § 39-11-411, to any of the offenses enumerated in this subdivision (25).

(26) "Within forty-eight (48) hours" means a continuous forty-eight (48) hour period not including Saturdays, Sundays, or federal or state holidays.

§ 40-39-203. (a) Within forty-eight (48) hours of establishing or changing a primary or secondary residence or becoming employed or practicing a vocation or becoming a student in this state, the offender shall register in person as required by the provisions of this part. Likewise, within forty-eight (48) hours of release on probation or any other alternative to incarceration, excluding parole, the offender shall register in person as required by the provisions of this part.

(b) An offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours prior to such offender's release, register in person, completing and signing a TBI registration form, under the penalty of perjury pursuant to § 39-16-702(b)(3) as follows:

- (1) If incarcerated in a state, federal, or private penal facility, with the warden or the warden's designee; or
- (2) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(c) An offender from another state, jurisdiction, or country, who has established a primary or secondary residence within this state, shall, within forty-eight (48) hours of establishing such residency, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury pursuant to § 39-16-702(b)(3).

(d) An offender from another state, jurisdiction, or country, who is not a resident of this state, shall within forty-eight (48) hours of employment, commencing practice of a vocation or becoming a student in this state, register in person, completing and signing a TBI registration form, under the penalty of perjury pursuant to § 39-16-702(b)(3) with:

(1) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(2) The law enforcement agency of any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(e) An offender from another state, jurisdiction, or country, who becomes a resident of this state pursuant to the Interstate Compact Act codified in Title 40, Chapter 28, Part 4, shall within forty-eight (48) hours of entering the state register in person with the board, completing and signing a TBI registration form, under the penalty of perjury pursuant to § 39-16-702(b)(3), in addition to the requirements of the Interstate Compact Act and the sex offender directives from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the registration requirements of this part.

(g) Offenders who were previously required to register under Title 40, Chapter 39, Part 1, shall register in person with the designated law enforcement agency within thirty (30) days of the effective date of this act. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental and/or physical disabilities are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form such offender's intent to reside in another state, jurisdiction, or country, and then who decides to remain in this state shall, within forty-eight (48) hours of the decision to remain in the state report in person to the designated law enforcement agency and update all information pursuant to subsection (i) of this section.

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information under the penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases;

(2) Date and place of birth;

(3) Social security number;

(4) State of issuance and identification number of any valid driver license or licenses, or if no valid driver license card is held, any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at such address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer, or manufactured home, used by an offender, including descriptions, VIN, and license tag numbers;

(11) Any vessel, live-aboard vessel, or houseboat used by an offender, including the name of the vessel, description, and all other identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed or practices a vocation, or is a student;

(13) Race and gender;

(14) Name, address, and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults;

(16) Whether any minors reside in the primary or secondary residence; and

(17) Any other registration, verification, and tracking information, including fingerprints and a current photograph of the offender, vehicle(s) and vessel(s) as referred to in subdivisions (10) and (11), as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(j) No later than the third day after an offender's initial registration, the registration agency shall send by the U.S. postal service the original signed TBI registration form containing information required by subdivision (i) to TBI headquarters in Nashville.

(k) The offender's signature on the TBI registration form creates the presumption that such offender has knowledge of the registration, verification, and tracking requirements of this part.

§ 40-39-204. (a) The TBI shall maintain and make available a connection to the SOR, for all criminal justice agencies with TIES (Internet) capabilities by which registering agencies shall enter original, current and accurate data required by this part. TBI will provide viewing and limited write access directly to the SOR through TIES (Internet) to registering agencies for the entry of record verification data, changes of residence, employment, or other pertinent data required by this part and to assist in offender identification. Registering agencies should immediately, but in no case shall exceed twelve (12) hours, enter all data received from the offender as required by the TBI and § 40-39-203(i), into the TIES (Internet) for the enforcement of this part by TBI, designated law enforcement agencies, TDOC, private contractors with TDOC, and the board.

(b) At least once during the months of March, June, September, and December of each calendar year, all violent sexual offenders shall report in person to the designated law enforcement agency to update such offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information in the TBI registration form. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental and/or physical disabilities are exempt from the in-person reporting and fingerprinting, as otherwise provided by this part. Once a year during the March reporting, the violent sexual offender shall pay the specified administrative costs not to exceed one hundred dollars (\$100.00) which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and/or any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental and/or physical disabilities are exempt from paying the administrative cost, as otherwise provided by this part.

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update such offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form, and to pay the specified administrative costs not to exceed one hundred dollars (\$100.00) which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and/or any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental and/or physical disabilities are exempt from the in-person reporting and fingerprinting and administrative cost, as otherwise provided by this part.

(d) Within three (3) days after the offender's verification, the designated law enforcement agency with whom the offender verified shall send by U.S. postal service the original signed TBI registration form containing information required by § 40-39-203(i) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other forms required by § 40-39-207, which are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(e) If a person required to register under this part is re-incarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge, or any other form of alternative sentencing, the offender shall immediately report such offender's status as a sexual offender or violent sexual offender to the appropriate registering agency. Registration, verification and tracking requirements for such persons are tolled during the subsequent incarceration. Within forty-eight (48) hours of the release for any subsequent re-incarcerations, the offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration, verification and tracking requirements for such persons are tolled during the period of deportation. Within forty-eight (48) hours of the return to this state after deportation, the offender shall register with the appropriate designated law enforcement agency.

(f) Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental and/or physical disabilities shall be exempted from the in-person reporting, fingerprinting, and administrative cost requirements. However, it shall be the responsibility of the offender, the offender's guardian, the person holding the offender's power of attorney, or in the absence thereof, the administrator of the facility, to report any changes in the residential status to TBI headquarters in Nashville by U.S. postal service.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. By the authority established in § 40-39-206(f), the TBI shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety.

§ 40-39-205. (a) TBI registration forms shall be designed, printed, and distributed by and at the expense of the TBI. These forms shall include instructions for compliance with this part and a statement of understanding and acknowledgment of those instructions to be signed by the offender. TBI registration forms shall be available from registering agencies, parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b) All information contained in the SOR may be verified by any designated law enforcement agency as well as any district attorney general's criminal investigator.

(c) The officer or employee responsible for supervising an offender who has been released on probation, parole, or any other alternative to incarceration, shall promptly:

(1) Obtain the offender's signed statement acknowledging that the named officer or employee:

(A) Has fully explained, and the offender understands, the registration, verification, and tracking requirements and sanctions of this part and the current sex offender directives established by the board; and

(B) Has provided the offender with a blank TBI registration form and assisted the offender in completing the form; and

(C) Obtain fingerprints, palm prints and photograph of the offender, and vehicle(s), and vessel(s) as determined necessary by the agency.

(2) The officer or employee shall immediately, but in no case shall exceed twelve (12) hours from registration, enter all data received from the offender as required by TBI and § 40-39-203(d), into the TIES (Internet). The officer or employee shall within three (3) days send by U.S. postal service the signed and completed TBI registration form to TBI headquarters in Nashville. The photographs of the offender, vehicles, and vessels and the fingerprints should also be sent by U.S. postal service within three (3) days if not electronically submitted to TBI headquarters in Nashville. The registering agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(d) Not more than forty-eight (48) hours prior to the release of an offender from incarceration with or without supervision, the warden of the correctional facility or the warden's designee or sheriff of the jail or the sheriff's designee shall obtain the offender's signed statement acknowledging that the aforementioned official has fully explained, and the offender understands, the registration, verification, and tracking requirements, and sanctions of this part. If the offender is to be released with or without any type of supervision, the warden of the correctional facility or the warden's designee or sheriff of the jail or the sheriff's designee shall assist the offender in completing a TBI registration form. The aforementioned official shall also obtain fingerprints, palm prints and

photograph of the offender, and vehicle(s), and vessel(s) as determined necessary by the agency. Such official shall send by U.S. postal service the signed and completed TBI registration form to TBI headquarters in Nashville within three (3) days of the release of the offender. The photographs of the offender, vehicle(s), and vessel(s) and the fingerprints should also be sent by U.S. postal service within three (3) days if not electronically submitted to TBI headquarters in Nashville.

(e) If the offender is placed on unsupervised probation, the court shall fully explain to the offender on the court record the registration, verification, and tracking requirements, and sanctions of this part. The court shall then order the offender to report within forty-eight (48) hours in person to the appropriate registering agency to register as required by the provisions of this part.

(f) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all offenders, including those who move into this state, are informed and periodically reminded of the registration, verification, and tracking requirements, and sanctions of this part.

§ 40-39-206. (a) Using information received or collected pursuant to this part, the TBI shall establish, maintain, and update a centralized record system of offender registration, verification, and tracking information. The TBI may receive information from any credible source and may forward such information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification, and tracking information to the identification division of the Federal Bureau of Investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with the provisions of this part, pursuant to the powers enumerated in subsection (f), the TBI shall make such information available through the SOR to the district attorney general, designated law enforcement agencies, and the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release.

(c) For all sexual offenses, and offenses now defined as violent sexual offenses, committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on the TBI registration form shall be confidential; provided that the TBI, a local law enforcement agency, or a law enforcement agency of any institution of higher education may release relevant information deemed necessary to protect the public concerning a specific offender who is required to register pursuant to this part.

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of institutions of higher education, courts, probation and parole; the district attorneys general and their employees; and other public officers and employees assigned responsibility for offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this part.

(e) For all sexual offenses, and offenses now defined as violent sexual offenses, committed on or after July 1, 1997, the information concerning a registered offender set out in subdivisions (1)-(10) shall be considered public information. In addition to making such information available in the same manner as public records, the TBI shall prepare and place the information on the state's Internet homepage. This information shall become a part of the Tennessee Internet criminal information center when such center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

- (1) The offender's complete name as well as any aliases;
- (2) The offender's date of birth;
- (3) The sexual offense(s) and/or violent sexual offense(s) of which the offender has been convicted;
- (4) The primary and secondary addresses including the house numbers, county, city, and ZIP code area in which the offender resides;
- (5) The offender's race and gender;
- (6) The date of last verification of information by the offender;
- (7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number, and issuing state or any state or federal issued identification number;

(9) The offender's parole/probation officer; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. Such rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

§ 40-39-207. (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this act may file a request for termination of registration requirements with TBI headquarters in Nashville.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR to determine whether the offender has complied with the provisions of this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks to determine whether the offender has been convicted of any additional sexual offenses as defined in § 40-39-202(17) or violent sexual offenses as defined in § 40-39-202(25).

(c) If it is determined that the offender has not been convicted of any additional sexual offenses or violent sexual offenses during the 10-year period and the offender has substantially complied with the provisions of this part and any previous versions thereof, the TBI shall remove the offender's name from the SOR and notify the offender that such offender is no longer required to comply with the provisions of this part.

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the 10-year period or has not substantially complied with the provisions of this part and the previous versions thereof, the TBI shall not remove the offender's name from the SOR and shall notify the offender that such offender has not been relieved of the provisions of this part.

(e) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of such offender's 10-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(f) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides if such county is in Tennessee, for review of such decision. Such review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons such request was denied.

(1) An offender required to register under this part shall continue to comply with the registration, verification, and tracking requirements for the life of that person if that offender:

(A) Has one (1) or more prior convictions for a sexual offense as defined in § 40-39-202(17); or

(B) Has been convicted of a violent sexual offense as defined in § 40-39-202(25).

(2) As used in this subdivision, "prior conviction" means any conviction for a sexual offense or violent sexual offense as defined in § 40-39-202(17) and § 40-39-202(25) which occurred prior to the date of the offense for which the offender is currently required to register.

§ 40-39-208. (a) It is an offense for an offender to knowingly violate any provision of this part. Such violations shall include, but not be limited to the following:

(1) Failure of an offender to timely register;

(2) Falsification of a TBI registration form;

(3) Failure to timely disclose required information to the designated law enforcement agency;

(4) Failure to sign a TBI registration form;

(5) Failure to pay the annual administrative costs, if financially able;

(6) Failure to timely disclose status as a sexual offender or violent sexual offender to the designated law enforcement agency upon re-incarceration;

(7) Failure to timely report to the designated law enforcement agency upon release after re-incarceration; and

(8) Failure to timely report to the designated law enforcement agency following re-entry in this state after deportation.

(b) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(c) The first such violation of this part is punishable by a fine of not less than three hundred fifty dollars (\$350.00) and imprisonment for not less than ninety (90) days.

(d) A second violation of this part is punishable by a fine of not less than six hundred dollars (\$600.00) and imprisonment for not less than one hundred eighty (180) days.

(e) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars (\$1,100.00) and imprisonment for not less than one (1) year.

(f) A violation of this part is a continuing offense. If an offender is required to register pursuant to this part, venue lies in any county in which the offender may be found or in any county where the violation occurred.

(g) In a prosecution for a violation of this section, upon the request of a district attorney general, law enforcement agency, the board of probation and parole, or its officers, or a court of competent jurisdiction, and for any lawful purpose permitted by this part, the records custodian of the TBI's centralized records system of offender registration, verification and tracking information (SOR) shall provide the requesting agency with certified copies of specified records being maintained in the registry.

(h) The records custodian providing copies of records to a requesting agency pursuant to subsection (1), shall attach the following certification:

I, _____, HAVING BEEN APPOINTED BY THE DIRECTOR OF THE TENNESSEE BUREAU OF INVESTIGATION AS CUSTODIAN OF THE BUREAU'S CENTRALIZED RECORDS SYSTEM OF SEXUAL AND VIOLENT SEXUAL OFFENDERS, REGISTRATION, VERIFICATION AND TRACKING INFORMATION (SOR), HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECORDS MAINTAINED WITHIN SAID REGISTRY.

SIGNATURE TITLE DATE

AFFIX THE BUREAU SEAL HERE

§ 40-39-209. Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction.

§ 40-39-210. Upon receipt of notice of the death of a registered offender, the TBI shall remove from the SOR all data pertaining to the deceased offender.

§ 40-39-211. (a) While mandated to comply with the requirements of this chapter, no sexual offender as defined in § 40-39-202(16) or violent sexual offender as defined in § 40-39-202(24) whose victim was a minor shall knowingly establish a primary or secondary residence or any other living accommodation or knowingly accept employment within one thousand feet (1,000') of the property line on which any public school, private or parochial school, licensed day care center, or any other child care facility is located.

(b) No sexual offender as defined in § 40-39-202(16) or violent sexual offender as defined in § 40-39-202(24), shall knowingly reside within one thousand feet (1,000') of the property line on which the offender's former victims, or the victims' immediate family members, reside nor shall such

offender knowingly come within one hundred feet (100') of any of the offender's former victims, except as otherwise authorized by law.

(c) While mandated to comply with the requirements of this chapter, no sexual offender as defined in § 40-39-202(16) or violent sexual offender as defined in § 40-39-202(24) whose victim was a minor shall knowingly establish a primary or secondary residence or any other living accommodation where a minor resides. Notwithstanding subsection (c) of this section, such an offender may reside with a minor if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law, or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d) Changes in the ownership or use of property within one thousand feet (1,000') of the property line of an offender's primary or secondary residence or place of employment which occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(e) A violation of this section is a Class E felony.

SECTION 2. If the provisions of this act are declared to be invalid, the provisions of Tennessee Code Annotated, Title 40, Chapter 39, Part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect August 1, 2005, the public welfare requiring it. For the purpose of the TBI designing, printing, and distributing the registration and other necessary forms pursuant to § 40-39-205(a) and promulgating any rules necessary to implement the provisions of this part, this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 18, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 7th day of June 2005


PHIL BREDESEN, GOVERNOR